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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71

In the Matter of TENNESSEE CENTRAL RAILWAY COMPANY, Debtor,
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND
DAVIDSON COUNTY, TENNESSEE,
Petitioner,

v.

A. BATTLE RODES, Trustee of Tennessee
Central Railway Company, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

**To the United States Court of Appeals
for the Sixth Circuit**

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OPINIONS BELOW

The opinion of the Court of Appeals and the opinion of Judge Paul C. Weick dissenting from the denial of rehearing are not yet officially reported, but are set out in the Appendix to this petition at pages A-1, A-16.[1] The

[1] The opinion of Judges Edwards and Peck, two members of the original panel assigned to this case, was filed February 2, 1972. The third member of said original panel, Judge Henry L. Brooks, died while the case was under consideration, on December 30, 1971. On the petitions to rehear, Judge Paul C. Weick was appointed to fill out the panel.

opinion of the District Court is set out in the Appendix at page A-21, and is reported at 316 F. Supp. 1103. The judgment of the District Court is set out in the Appendix at page A-47.

JURISDICTION

The opinion and order of the United States Court of Appeals for the Sixth Circuit was entered on February 2, 1972 (Appendix, p. A-1); a timely petition for rehearing was denied on April 4, 1972 (Appendix, p. A-53). The jurisdiction of this Court is invoked under 28 U.S.C., § 1254(1).

QUESTIONS PRESENTED

1. Did the repeal, in the Reorganization Act of 1966,[2] of 15 U.S.C., § 603, which expressly denied governmental priority under § 3466 of RFC loans of the type herein involved, nine years after the abolition of the RFC,[3] and nine years after the transfer of RFC notes to the Secretary of the Treasury, suddenly endow such RFC notes with a priority status non-existent over the years?

2. In any event, is § 3466 (31 U.S.C., § 191) applicable to railroad organization proceedings under § 77 of the Bankruptcy Act?

3. Whether the mortgage claim of the Appellant, the United States Government, is entitled to prevail over the tax liens of local taxing jurisdictions.

4. Whether 1967 Metropolitan Government ad valorem taxes assessed against the Tennessee Central Railway

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[2] Pub. L. 89-554, § 8(a) (Schedule of Laws repealed), Sept. 6, 1966, 80 Stat. 378; (Recodification of Title 5).

[3] Reorganization Plan No. 1, 1957, June 30, 1957, 22 F.R. 4633, 71 Stat. 647.

Company can be considered administration expenses; and if so, whether such administration expenses would prevail over the United States Government's claim under R.S. 3466 (31 U.S.C., § 191) and its mortgage claim.

STATUTES INVOLVED

The relevant sections of § 77 of the National Bankruptcy Act (11 U.S.C., § 205); § 3466 (31 U.S.C., § 191); 15 U.S.C., § 603; and the relevant sections of Reorganization Plan No. 1 of 1957, effective June 30, 1957, 22 F.R. 4633, 71 Stat. 647, are set forth in the Appendix, pages A-54-A-60.

STATEMENT OF THE CASE

On December 14, 1967, Tennessee Central Railroad filed a petition for reorganization under Section 77 of the Bankruptcy Act, thus invoking the jurisdiction of the United States District Court for the Middle District of Tennessee, Nashville Division. On September 22, 1969, the Trustee of the Debtor petitioned the District Court to determine, *inter alia*, the order of priority of various claimants. After a hearing the Court concluded that petitioner herein, claiming recovery for 1967 ad valorem taxes assessed against the Tennessee Central Railroad Company, had priority over a claim asserted by the United States arising out of a loan to the Debtor by the Reconstruction Finance Corporation (R.F.C.)

In April of 1937 the R. F. C. loaned the Tennessee Central Railroad Company $5,000,000.00, the loan secured by first mortgage bonds of the railroad company. Induced by promises from the Tennessee Valley Authority (T.V.A.) of substantial coal purchases in coal fields of Putnam County, Tennessee, the Tennessee Central, in 1953, with the aid of further loans from the R.F.C. in excess of $2,-

000,000.00, bought substantial additional rolling stock and constructed an expensive line. Shortly thereafter T.V.A. discontinued its coal purchases.

In January, 1967, the United States Government extended the due date of its loans to December 31, 1967. At this time the United States Government was bound to have had full knowledge of the precarious financial condition of the Tennessee Central Railroad Company. Along with many other companies, it was the policy of the Tennessee Central Railroad Company to postpone payment of its Metropolitan Government taxes until immediately prior to, or shortly after, the delinquency date, 1 March, in order to retain the use of these funds for the longest possible time. For instance, in the years immediately prior to the year in question the Tennessee Central Railroad Company paid its Metropolitan Government taxes on the following dates:[4]

1964 taxes—Paid 26 February, 1965

1965 taxes—Paid 1 March, 1966

1966 taxes—Paid 7 March, 1967

The District Court held that the petitioner and certain other claimants were entitled to priority, stating:

> "Tennessee law grants these taxing units a 'first lien' on the property of the Tennessee Central. It is stated in 5 **Collier on Bankruptcy** (14th ed.) ¶ 77.21 that: 'Whenever tax claims are accorded a priority, even under 31 U.S.C. § 191, they will not supersede valid liens, or the priorities accorded administrative and operating costs or claims under the six months rule.' Therefore, the municipalities and counties

---

[4] These payment dates are set forth in an affidavit, executed by Paul R. Startup, Assistant Metropolitan Collections Officer, on 20 November, 1969. This affidavit was filed as part of the record, but is not included in the Joint Appendix.

should not be granted a priority over the six months claimants unless they possess a valid lien for their tax claims. The Court is of the opinion that the applicable Tennessee statute grants such a lien to these taxing units. Earlier, in **Collier**, *Id.*, it is noted: 'With respect to state taxes, many state statutes grant a priority for claims thereon, and this priority will be recognized by the court.' The statutory priority granted by § 67-801, T.C.A., governs in this case. Therefore, these counties and municipalities will be granted first priority in this recovery, ahead of both the six-months claimants, and the United States, as mortgagee and bondholder."

The District Court also held that Section 3466 (31 U.S.C. § 191) was inapplicable to a railroad reorganization proceeding under Section 77 of the Bankruptcy Act. On appeal the decision was reversed. The Court of Appeals did not reach the issue of priorities, holding rather that Section 3466 was applicable and that a decision on any other priorities was therefore unnecessary. A timely petition for rehearing was denied.

REASONS FOR GRANTING THE WRIT

The claim of the Metropolitan Government was denied by the Court by assigning a higher priority to the claim asserted by the United States Government under R.S. 3466. In doing so the court below has decided an issue of great significance in a way that is contrary to Congressional intent. The court applies Section 3466 in a Section 77 reorganization; and grants priority under Section 3466 to debts arising from loans made by the Reconstruction Finance Corporation which were expressly denied priority by the Congress. We will discuss these two issues in that order.

I

The court below felt compelled to its conclusion by the decision of this Court in **United States v. Key**, 397 U.S. 322, which held that Section 3466 applied with respect to a tax claim by the United States in a Chapter X proceeding. The District Court held that Section 3466 was inapplicable to Section 77 proceedings, and as Judge Weick said in his dissenting opinion:

> "The Court's opinion is based entirely on dicta in **United States v. Key**, 397 U.S. 322 (1970); but **Key** involved a different type of proceeding, namely, a corporate reorganization under Chapter X of the Bankruptcy Act, rather than a railroad reorganization proceeding under Section 77, such as was involved in the present case. Counsel even question the validity of the dicta, pointing out that the court on page 330 quoted Section 77(e), as it existed prior to the Act's amendment in 1935, when the statute was rewritten entirely and drastically changed.
>
> "There is nothing in the Court's opinion to indicate that it considered amended section 77.

"Furthermore, **Key** involved a tax claim of the United States. Our case, unlike **Key**, involved a loan made by R.F.D. to the railroad, which loan was secured by a pledge of $6,216,000 of First Mortgage 4% Bonds. At the time the railroad went into reorganization it owed the Government on the loan $4,571,000 in principal, and $461,731.13 in interest." A-16-A-17.

II

The applicability of R.S. Section 3466 was expressly excluded from Reconstruction Finance Corporation loans since all its powers, functions, rights and liabilities were transferred to the Secretary of the Treasury in 1957. The repeal of the exclusionary section in 1966 by the Omnibus Reorganization Act did not affect the non-applicability of R.S. Section 3466 (31 U.S.C. 191) to the Reconstruction Finance Corporation loans being collected by the Secretary of the Treasury. The issue is of great importance beyond this case. The error of the court below awards the entire estate of the United States Government, and the petitioner's claim of approximately $20,000.00 is wiped out. This sets an important precedent in that cities and counties who depend on this type of taxation for their survival are severely prejudiced.

III

The third and fourth questions presented in this Petition were pretermitted by the action of the court below. It is presumed that if the certiorari is granted and the lower court reversed that these questions will be remanded to the Court of Appeals. However, if this Court elects to pass on these questions it is respectfully requested to so indicate, and petitioner will be afforded the opportunity to brief these issues in its brief on the merits.

CONCLUSION

If either of the questions presented is resolved in favor of the petitioner it will be appropriate to remand the proceeding to the court below, or the judgment of the District Court should be reinstated.

Respectfully submitted

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APPENDIX

The Petitioner, the Metropolitan Government of Nashville and Davidson County, Tennessee, respectively relies on the printed appendix to the Petition for Certiorari filed by Louisville and Nashville Company, Illinois Central Railroad Company, et al., appeared in this proceeding.